IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

Bail Appl..No. 4564 of 2007(M)

[CRIME NO.385/2005 OF VELLIKULANGARA POLICE STATION]

PETITIONERS/ACCUSED 1 AND 2

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1. MANOJ, S/O.RAJAN, AGED 27 YEARS,
   PUTHENVEETTIL VEEDU, KORMALA DESOM,
   KUTTICHIRA VILLAGE, MUKUNDAPURAM TALUK.

2. SATHI, D/O.CHANDRIKA,
   AGED 16 YEARS, PULICKAL VEEDU,
   KORMALA DESOM, KUTTICHIRA VILLAGE,
   MUKUNDAPURAM TALUK.

BY ADV. SRI.A.C.DEVY

RESPONDENTS: RESPONDENT

STATE OF KERALA, REP.BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4564 of 2007

Dated this the 27th day of July 2007

O R D E R

Application for anticipatory bail. The petitioners face allegations under Section 8 of the Kerala Abkari Act. They were allegedly found to be in possession of 6 litres of arrack on 24/12/2005. They could not be arrested as they had allegedly taken to their heels. Crime was registered. Investigation was completed. Final report has been filed. Cognizance has been taken. Committal proceedings has been registered. Warrants of arrest have been issued by the learned Magistrate against the petitioners. The petitioners have now come before this court with a prayer that directions under Section 438 Cr.P.C may be issued in their favour.

2. The learned counsel for the petitioners submits that the petitioners are innocent. Their absence earlier was not wilful. They are willing to surrender before the learned Magistrate and seek regular bail. But they apprehend that their application for bail may not be considered by the learned Magistrate on merits, in accordance with law (in compliance with the directions in Sukumari v. State of Kerala [2001(1)KLT 22]) and expeditiously.

3. I find no merit in the prayer to invoke the powers under Section 482 Cr.P.C. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which they could not earlier appear before the

learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioners on merits, in accordance with law and expeditiously. Every court must do the same in the light of the decisions in Sukumari v. State of Kerala [2001(1) KLT 22] and Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339]. No special or specific directions appear to be necessary.

4. In the result, this bail application is dismissed but with the specific observation that if the petitioners surrender before the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

5. Incidentally there is a submission before me at the Bar that one of the accused is below the age of 18 years on the date of commission of the offence and now he is only 16 years, it is submitted. If that be so, in respect of that accused, resort must be taken by the petitioner under the provisions of the Juvenile Justice (Care and Protection) Act. Needless to say, the petitioner can raise this contention before the learned Magistrate.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007